

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

COMMONWEALTH OF	:	1:10-MC-158
PENNSYLVANIA,	:	
Plaintff,	:	
	:	
v.	:	Hon. John E. Jones III
	:	
JOHN J. BUCKSHAW,	:	
Defendant.	:	

MEMORANDUM

April 9, 2010

THE BACKGROUND OF THIS MEMORANDUM IS AS FOLLOWS:

On April 8, 2010, Defendant John J. Buckshaw (“Buckshaw”) filed a Notice of Removal from the Court of Common Pleas of Allegheny County with this Court. (Doc. 1). On that date, Buckshaw also filed a Motion for Leave to Proceed *In Forma Pauperis*. (Doc. 2). For the reasons that follow, this case shall be dismissed.

I. STANDARD OF REVIEW

Under 28 U.S.C. § 1915(e)(2)(B)(ii), a federal court must dismiss a case filed *in forma pauperis* if the court determines that the complaint “fails to state a claim on which relief may be granted.” In reviewing the legal sufficiency of a complaint, the Court must accept the truth of the plaintiff’s allegations. *Morrison*

v. Madison Dearborn Capital Partners III L.P., 463 F.3d 312, 314 (3d Cir. 2006).

A complaint must plead “enough facts to state a claim to relief that is plausible on its face.” *Bell Atlantic Corp v. Twombly*, 550 U.S. 544, 570 (2007) (rejecting the “no set of facts” language from *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)).

“While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of a cause of action’s elements will not do.” *Id.* at 555 (citation omitted). To survive a motion to dismiss, the factual allegations in the complaint “must be enough to raise a right to relief above the speculative level.” *Id.*

Pro se pleadings are to be construed liberally, *Haines v. Kerner*, 404 U.S. 519, 520 (1972), and pro se litigants are to be granted leave to file a curative amended complaint “even when a plaintiff does not seek leave to amend,” unless such an amendment would be inequitable or futile.” *Alston v. Parker*, 363 F.3d 229, 235 (3d Cir. 2004). However, a complaint that sets forth facts which affirmatively demonstrate that the plaintiff has no right to recover is properly dismissed without leave to amend. *Grayson v. Mayview State Hospital*, 293 F.3d 103, 108 (3d Cir. 2002).

II. DISCUSSION

This case is not removable under the federal removal statute. *See* 28 U.S.C. § 1441 (a). The federal removal statute only provides for the removal of *civil* lawsuits under certain circumstances. Buckshaw is attempting to remove a criminal prosecution to this Court. State criminal prosecutions are simply not removable to federal court, thus this case must be dismissed.

III. CONCLUSION

Accordingly, for the reasons stated above, this action shall be dismissed. An appropriate Order shall issue.